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10 SAAD, JOHN
AOC
4/13/93

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IV

IN THE MATTER OF:

SAAD TROUSDALE ROAD SITE
NASHVILLE, TENNESSEE

ELLIS AND KATHY SAAD
5831 PETTUS ROAD
ANTIOCH, TENNESSEE,

RESPONDENTS

ADMINISTRATIVE ORDER
DIRECTING COMPLIANCE WITH
REQUEST FOR ACCESS TO
CONDUCT REMOVAL ACTION

EPA Docket No.: 93-10-C

ADMINISTRATIVE ORDER

I. JURISDICTION

This Administrative Order is issued on this date pursuant to Section 104(e)(5) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9604(e)(5), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (SARA). This Administrative Order is issued to Ellis and Kathy Saad pursuant to the authority vested in the President of the United States by Section 104(e)(5) of CERCLA and delegated to the Administrator of the United States Environmental Protection Agency (EPA) on January 23, 1987, by Executive Order 12580, 52 Federal Register 2923, and further delegated to the Regional Administrator of Region IV, and redelegated to the Director, Waste Management Division.

II. STATEMENT OF PURPOSE

This Administrative Order requires Ellis and Kathy Saad to grant EPA entry and access to all portions of certain property constituting the Site, as such term is defined below, for the purpose of conducting an immediate removal action (Removal Action) to stabilize and remove all hazardous substances from the Site. This Administrative Order further requires Ellis and Kathy Saad to refrain from interfering with access to the Site by EPA and its authorized representatives for the purposes set forth herein.

III. FINDINGS OF FACT

For the purposes of this Order, EPA finds that:

- A. The Saad Trousdale Road Site (the Site) is located in an industrial/commercial district at 3655 Trousdale Road in Nashville, Tennessee. John P. Saad & Sons formerly operated as a waste oil re-refinery at the

Site. Ellis and Kathy Saad are current owners and possessors of the Saad Trousdale Road Site property.

- B. Oil and solvents have been detected in soil on Site. There is a fence around the property. However, the fence does not fully enclose the property and access to the Site is not limited.
- C. Results of EPA sampling indicated the presence of waste oil, herbicides, methylene chloride and other solvents, and various metals at the Site in both the groundwater and the soil;
- D. Hazardous substances as defined in Section 101(14) of CERCLA and subject to the terms and provisions of CERCLA are present at the Site;
- E. Pursuant to an Administrative Order on Consent dated April 11, 1990 (original Order), potentially responsible parties (Respondents) initiated a removal action at the Site. Respondents conducted the following activities: investigating whether stormwater runoff from the Site contributed to flooding problems in the area; removing and disposing of exposed drums, tanks, and tank contents on the Site; investigating an area at the Site thought to be a sinkhole.
- F. Pursuant to the original Order, Respondents submitted a report to EPA dated July 2, 1991 regarding the findings of the investigation. The July 2, 1991 report concluded that there was no discrete sinkhole at the Site but that additional investigatory and removal work was necessary in order to determine the extent of contamination at the Site and assess clean-up alternatives;
- G. On July 19, 1991, Respondents submitted a proposed work plan to EPA for performance of additional work;
- H. On August 22, 1991, with the approval of EPA's On-Scene Coordinator (OSC), Respondents began field work described in the July 19, 1991 work plan;
- I. Pursuant to the original Order and the schedule contained in the Work Plan, on January 13, 1992, Respondents submitted to EPA a report on the investigatory work and recommendations for further response actions;
- J. The January 13, 1992 report submitted to EPA indicated continuing contamination from hazardous substances at the Site, including, but not limited to, ethylbenzene,

toluene, xylene, tetrachloroethylene, trichloroethylene, PCBs, cadmium, and lead. The report recommended further removal action to address continuing contamination at the Site.

- K. On August 12, 1992, EPA entered into a second Administrative Order on Consent (second AOC) with approximately one hundred (100) potentially responsible parties (Respondents) to conclude the removal action at the Site. The terms of the second AOC require Respondents to "use reasonable efforts to obtain Site access agreements from present owners and possessors." Respondents negotiated with Ellis and Kathy Saad a Site access agreement which expired on April 1, 1993 before completion of the Removal Action at the Site.
- L. Respondents used reasonable efforts to negotiate Site access agreements with Ellis and Kathy Saad to allow the conclusion of the removal action at the Site but were unable to reach any agreement Ellis and Kathy Saad.
- M. Unless officers, employees, and representatives of EPA and Respondents are allowed access to the Site for the specific purpose of continuing the Removal Action, EPA and Respondents will not be able to conduct activities necessary to protect human health and the environment.
- N. Unless officers, employees, and representatives of EPA and Respondents are allowed access for the specific purpose of conducting the Removal Action at the Site, cleanup activities at the Site will have to be further postponed; the threat to human health and the environment will be allowed to continue and removal costs to escalate.

IV. DETERMINATIONS OF LAW

Based upon information available on the date of issuance of this Administrative Order, the Director, Waste Management Division makes the following Determinations of Law:

- A. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. Ellis and Kathy Saad are "owners" as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20)(A)(ii).
- C. Ellis and Kathy Saad are "persons" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

- D. Ethylbenzene, Toluene, Xylene, Tetrachloroethylene, Trichloroethylene, PCBs, Cadmium, and Lead are hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- E. The presence of hazardous substances at the Site and/or the potential and actual migration of such substances constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22). Consequently, EPA has a reasonable basis to believe there may be a release or threat of release of a hazardous substance or pollutant or contaminant at or from the Site.
- F. Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), authorizes EPA and its representatives to have access to the Site, among other things to perform response actions and to issue an order when such access is not granted. Ellis and Kathy Saad's refusal to consent to access to the Site constitutes such a denial of access.

V. PARTIES BOUND

- A. This Order shall apply to and be binding upon Ellis and Kathy Saad, their agents, successors and assigns. No change in ownership or corporate or partnership status will in any way alter Ellis and Kathy Saad's responsibilities under this Order.
- B. Ellis and Kathy Saad shall provide a copy of this Order to any person other than EPA or EPA's authorized representatives who attempts to enter the Site or advises Ellis and Kathy Saad that it intends to enter the Site for any purpose.

VI. ORDER

Based upon the foregoing Findings of Fact and Determinations of Law, it is hereby Ordered that Ellis and Kathy Saad comply with EPA's request for access to the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e) for the purpose of conducting the Removal Action in accordance with Paragraphs A, B, C and D below;

- A. EPA and its authorized representatives and Respondents and their authorized representatives shall be allowed access to all property owned by Ellis and Kathy Saad and known as the Saad Trousdale Road Site located in Nashville, Tennessee for the purpose of conducting a Removal Action at the Site. The activities to be undertaken during the Removal Action include, but are not limited to:

- i. Continue characterization of the Site to include trenching in open areas and boring under the buildings on-site.
 - ii. Stage, categorize, and inventory any additional drums and containers on-site;
 - iii. Sample any drums, roll-offs, tanker trailers and containers on-site;
 - iv. Remove hazardous substances from the Site, and stabilize any unforeseen area posing a threat to human health or the environment; and
 - v. Post warning signs or security personnel at the entrance to or around the Site.
- B. EPA and its authorized representatives and Respondents and their authorized representatives shall be provided access to the Site until completion of the Removal Action. EPA expressly reserves the right to extend this time period if necessary to perform any additional work required by EPA.
- C. Ellis and Kathy Saad shall allow EPA and its authorized representatives and Respondents and their authorized representatives to enter the Site and conduct the Removal Action at all reasonable times as required by Section 104(e)(3) of CERCLA, 42 U.S.C. § 9604(e)(3).
- D. Ellis and Kathy Saad and any persons who have notice of this Order shall not interfere in any way with the Removal Action being conducted at the Site as described herein, nor shall they attempt to interfere with any additional work determined by EPA to be necessary. Any such interference shall be deemed a violation of this Order.

VII. CONFIDENTIAL BUSINESS INFORMATION

Ellis and Kathy Saad are hereby advised that, consistent with 18 U.S.C. § 1905, they may assert a confidentiality claim with respect to any information obtained by EPA in the course of activities performed at the Site under the authority of this Administrative Order. Information accorded protection by 18 U.S.C. § 1905 includes information relating to or concerning trade secrets, processes, operation, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, firm, partnership, corporation or association.

VIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record upon which this Order is issued is available for review on weekdays between the hours of 8:00 a.m. and 5:00 p.m. in the Office of Regional Counsel, United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365. Please contact Elizabeth B. Davis, Assistant Regional Counsel, in advance, at (404) 347-2641, ext. 2283, if you wish to review the Administrative Record at the offices of EPA, Region IV.

IX. OPPORTUNITY TO CONFER AND EFFECTIVE DATE OF ADMINISTRATIVE ORDER

- A. This Administrative Order shall be served upon Ellis and Kathy Saad by the United State Postal Service via certified mail, return receipt requested, and by personal service. Within twenty-four hours of receipt of this Administrative Order, Ellis and Kathy Saad may request a conference with EPA to discuss this Administrative Order. Any such conference shall be held within five (5) business days of the date of Ellis and Kathy Saad's request. At any conference held pursuant to Ellis and Kathy Saad's request, Ellis and Kathy Saad may appear by an attorney or other representative. Ellis and Kathy Saad should contact Elizabeth B. Davis, Assistant Regional Counsel, at the above noted telephone number to arrange such a conference.
- B. Any comments which Ellis and Kathy Saad may have regarding this Administrative Order, its applicability, the correctness of any factual determination upon which the Administrative Order is based, or any other relevant and material issue must be reduced to writing and submitted to EPA within three (3) business days following the conference, or if no conference is requested, within five (5) business days following receipt of this Administrative Order. Any such writing should be sent to Elizabeth B. Davis, Assistant Regional Counsel, at the address noted above.
- C. This Administrative Order shall be effective on the seventh calendar day following receipt by Ellis and Kathy Saad unless a conference is requested as provided above. If a conference is requested, this Administrative Order shall become effective within five (5) business days following the date of the conference unless modified by EPA.

X. NOTICE OF INTENTION TO COMPLY

On or before the effective date of this Administrative Order, Ellis and Kathy Saad shall provide written notice to EPA stating whether they intend to comply with the terms hereof. Such notice shall be sent by overnight carrier, return receipt requested, to

Elizabeth B. Davis, Assistant Regional Counsel, U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. In the event Ellis and Kathy Saad fail to provide such notice, Ellis and Kathy Saad shall be deemed not to have complied with the terms of this Administrative Order.

XI. RESERVATION OF RIGHTS

Except as expressly provided in this Order, EPA reserves all rights and defenses it may have and nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek equitable relief and imposition of statutory penalties. Nothing herein shall restrict or limit any of EPA's access or information gathering authorities under applicable law.

XII. OTHER CLAIMS

Nothing in this Administrative Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not named by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

XIII. OTHER APPLICABLE LAWS

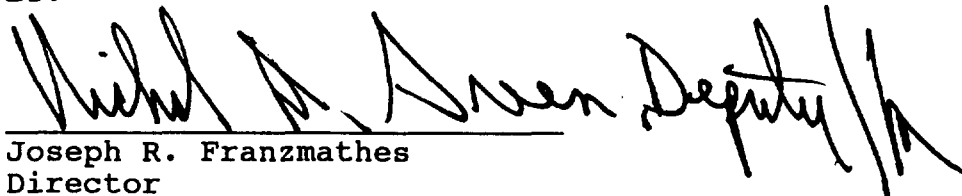
All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all appropriate local, state and federal laws and regulations.

XIV. PENALTIES FOR NONCOMPLIANCE

Ellis and Kathy Saad are hereby advised that, pursuant to Section 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), a court may assess a civil penalty not to exceed \$25,000 per day for each day that Ellis and Kathy Saad unreasonably fail to comply with this Administrative Order or any part hereof.

IT IS SO ORDERED this 13TH day of April, 1993.

BY:



Joseph R. Franzmathes
Director

Waste Management Division
United States Environmental Protection Agency, Region IV

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MESSAGE CONFIRMATION

DATE:04/19/93 TIME:12:06

ID:EPA REGIONAL COU

| DATE | TIME | TX-TIME | DISTANT STATION ID | MODE | PAGES - | RESULT |
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E. Davis



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365

APR 13 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND HAND DELIVERY

Mr. Ellis Saad
Ms. Kathy Saad
5831 Pettus Road
Antioch, Tennessee 37013

RE: Saad Trousdale Road Site
Unilateral Administrative Order
EPA Docket No. 93-10-C

Dear Mr. and Ms. Saad:

The purpose of this letter is to transmit to you the enclosed Unilateral Administrative Order (the Order), issued by the United States Environmental Protection Agency (EPA) pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9604(e). Pursuant to the terms of the Order, you are required to provide EPA and its authorized representatives access to the property located at 3655 Trousdale Road, Nashville, Tennessee, and known as the Saad Trousdale Road Site (the Site).

On or before the effective date of the Order (seven days after the date of receipt), you are required to notify EPA of your intention to comply with the terms of the Order. The effective date of the Order is set forth in Section IX of the Order. Failure to provide the requisite notice to EPA, in writing, will constitute a violation of the Order. A civil penalty of up to \$25,000 per day may be assessed for any violation of the Order.

If you have any technical questions relating to the enclosed Order please contact the On-Scene Coordinator for the Site, Fred Stroud, at (404) 347-3931. If you have any legal questions, please direct them to Elizabeth B. Davis, Assistant Regional Counsel, at (404) 347-2641 ext. 2283.

Sincerely,

Joseph R. Franzmathes
Director
Waste Management Division

Enclosure